THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.1569 of 2006

Dated 24-03-2006

Between:

A. Madhusudhan Reddy.

....

PETITIONER

AND

Smt. K. Sridevi and four others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.1569 of 2006

O R D E R:

This writ petition is filed seeking a writ of Certiorari to call for the records relating to the award dated 19-02-1994 passed by the third respondent in A.R.C.No.6/91-G as confirmed in the order dated 26-05-1997 in C.T.A.No.144 of 1995 by the fifth respondent as well as the consequential orders in E.P.No.117 of 2000 in A.R.C.No. 6/91-G on the file of the Court of the VI Junior Civil Judge, City Civil Court, Hyderabad, and to quash the same.

The petitioner claims to be the owner and possessor of plot, admeasuring 415 square yards, bearing No.391/A in Survey No.403/1 (old), New No.120 of Shaikpet Village and Survey No.102/1 of Hakimpet Village, having purchased the same from one Smt. Anitha Ashok under two registered sale deeds dated 07-04-2000 and 24-04-2000. It is stated that having obtained the necessary permission from the Municipal Corporation of Hyderabad, he had constructed a building in the said plot

and has been in continuous possession and enjoyment of the same. It is stated that the first respondent, who is the owner of the plot No.389, raised a dispute under Section 62 (4) of the Andhra Pradesh Cooperative Societies Act, 1964 (hereinafter referred to as 'the Act') by way of arbitration seeking to add the excess land available admeasuring 12 meters in length on the western side by tilting the western face of plot No.389 belonging to her and also to make northern face and southern face of plot No.389 parallel by allowing eastern face. The fourth respondent, who is the owner of plot No.390, as well as the second respondent-Society were made parties to the said dispute before the third respondent-Arbitrator which was numbered as A.R.C.No.6/91-G. Having made the necessary enquiry, the third respondent passed an award dated 19-02-1994 with a direction to the fourth respondent herein to handover the vacant possession of the land admeasuring six meters in width on the eastern side of his plot i.e., plot No.390 to the Society (second respondent herein), which in turn shall deliver the same to the first respondent herein. Aggrieved by the same the second respondent-Society filed C.T.A.No.144 of 1995 before the fifth respondent-Andhra Pradesh Cooperative Tribunal, Hyderabad, which was dismissed by order dated 26-05-1997. Aggrieved by the same, the fourth respondent filed W.P.No.20060 of 2002, however the same was dismissed

by this Court, by order dated 10-10-2002, at the stage of admission. Against the said order, the fourth respondent preferred W.A.No.1651 of 2002, which was disposed of by order dated 23-02-2005, modifying the order dated 10-10-2002 in W.P.No.20060 of 2002 as under:

> *"That the readjustment be made in accordance with the directions of the Arbitrator, provided the plot holder of plot No.390 i.e., appellant, does not loose any land and he retains the area which had been allotted to him by the 2nd respondent – Society."*

In pursuance thereof, the first respondent initiated execution proceedings and accordingly filed E.P.No.117 of 2000 on the file of the Court of VI Junior Civil Judge, City Civil Court, Hyderabad, in which, by order dated 24-10-2005, warrant was issued to the bailiff with the directions as under:

> *"Whereas the under mentioned Schedule Property in the occupancy of the Judgment Debtor has been decreed in favour of the Decree Holder, you are hereby directed to put the said Decree Holder in possession of the same, and you are hereby authorized to remove any person bound by the Decree who may refuse to vacate the same.*
>
> *The next date of hearing is 30th day of November, 2005."*

The grievance of the petitioner is that by virtue of the said order dated 23-02-2005 in W.A.No.1651 of 2002 and

the order dated

24-10-2005 in E.P.No.117 of 2000 in A.R.C.No.6/91-G, the house constructed by him in plot No.391/A is being demolished to provide six meters of land as per the directions in the award dated 19-02-1994 in A.R.C.No.6/91-G. The petitioner contends that since admittedly neither he nor his vendor was a party to A.R.C.No.6/91-G or any of the subsequent proceedings, under the guise of the alteration sought to be made in execution of the award dated 19-02-1994, the construction made by him in plot No.391/A cannot be disturbed in any manner.

I have heard the learned counsel for both parties and perused the material on record.

Admittedly the petitioner was not a party to any of the proceedings initiated by the first respondent i.e., either to the award proceedings in A.R.C.No.6/91-G before the third respondent or C.T.A.No.144 of 1995 before the fifth respondent, much less to the proceedings in this Court in W.P.No.20060 of 2002 and W.A.No.1651 of 2002. Though in E.P.No.117 of 2000, the Executing Court, directed the bailiff to remove any person bound by the decree who may refuse to vacate the scheduled property, the subsequent directions are to make consequential adjustments in the plots situated on western side of plot No.390. The petitioner states that the plot owned by him

i.e., plot No.391/A is one of the plots situated on the western side of plot No.390 and therefore in the process of execution of the award dated 19-02-1994 in A.R.C.No.6/91-G, the constructions made by him would be demolished. Since admittedly the petitioner was not a party to any of the proceedings, it cannot be said that he is bound by the decree and therefore the apprehension of the petitioner appears to be without any basis. At any rate since the petitioner has already made an application before the Executing Court raising the above said objections and the same has been numbered as E.A.No.685 of 2005 and coming up for hearing, I am of the opinion that it would not be appropriate for this Court to express any opinion and the Executing Court will consider all the objections raised by the petitioner and pass appropriate orders in accordance with law. That apart, in view of the fact that the petitioner was not made a party to the earlier proceedings and the plea of the petitioner that the adjustments required to be made in pursuance of the award dated 19-02-1994 passed by the third respondent would effect the constructions made by him in his own plot, which involve several disputed questions of fact, it is also open to the petitioner to avail the alternative remedy as available under the Act, either by way of raising a dispute under Section 61 of the Act or any other

appropriate remedy.

Accordingly, without expressing any opinion with regard to the objections raised by the petitioner, the writ petition is disposed of with a direction to the Executing Court to consider the objections raised by the petitioner in E.A.No.685 of 2005 and to pass appropriate orders, after hearing all the parties concerned, in accordance with law. Till such time, the respondents are directed not to interfere with any portion of the property of the petitioner in plot No.391/A situated at Road No.81, Jubilee Hills, Hyderabad, in execution of the award dated 19-02-1994 in A.R.C.No.6/91-G. The petitioner is also granted liberty to work out the appropriate remedy for redressal of his grievance as indicated above. No costs.

(G. ROHINI, J)

Date:24-03-2006
ghn